

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10453-RWZ

KEVIN GIBBONS and
JOHN CONTE

v.

CHAMPION WINDOW COMPANY
OF BOSTON SOUTH, LLC

PRETRIAL ORDER

January 14, 2004

ZOBEL, D.J.

This matter having come before the Court at a pretrial conference held pursuant to Rule 16, Fed. R. Civ. P., 28 U.S.C., and Kevin B. Callanan having appeared as counsel for plaintiffs, Kevin Gibbons and John Conte; and Adam J. Brodsky having appeared as counsel for defendant Champion Window Company of Boston South, LLC, the following action was taken:

1. SETTLEMENT

The parties shall report the status of settlement negotiations on or before January 26, 2006.

2. TRIAL

If the case is not settled, trial to a jury will commence on January 31, 2005, at 9 a.m. The court will impanel the jury on that day, but if the criminal case also scheduled does not plead, the presentation of evidence will begin immediately after the conclusion of the criminal case.

3. JURY

The court will impanel eight jurors. Each side shall have four peremptory challenges. Counsel shall file any proposed questions to the jury on voir dire by January 26, 2005.

4. ISSUES

The parties agree that the only issues to be tried are:

- a) whether defendant terminated plaintiffs' employment in retaliation for their contacting the DOL concerning the minimum wage;
- b) whether defendant's conduct was willful. The parties are undecided whether this is a question for the court or the jury;
- c) The amount of damages. Plaintiffs claim for lost wages and emotional distress. Defendant denies that emotional distress is a legally viable element of damages.

5. WITNESSES

The only witnesses who will testify at trial, including plaintiffs' spouses, are:

FOR PLAINTIFF

Kevin Gibbons

John Conte

Joan M. Daly

Linda Rosenfield

FOR DEFENDANT

Dwayne Draggoo

Joseph Lopes

George McGrady

Linda Rosenfield

Joan Daly

6. EXHIBITS

Plaintiffs' Exhibits

1. January 29, 2004 letter to Dwayne Draggoo from USDOL
2. Plaintiffs' Payroll Records

Defendant's Exhibits

1. Plaintiffs' Payroll Records
2. January 29, 2004 letter to Dwayne Draggoo from USDOL
3. USDOL Memorandum Regarding Investigation Results (4 pages)

Any additional exhibits to which opposing counsel do not object shall be deemed to be admitted into evidence. Counsel shall mark these exhibits and prepare a listing, thereof, in duplicate. Objected-to exhibits shall be marked for identification and listed separately.

7. REQUESTS AND QUESTIONS

On the first day of trial, January 31, 2005, counsel shall file:

- a. Requests for instructions; and
- b. Proposed questions to the jury on special verdict.

1/14/05
DATE


RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE